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Nos. 87-712 and 87-929

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, *et al.*,

Petitioners,

v.

COMMONWEALTH OF MASSACHUSETTS,

Respondent.

COMMONWEALTH OF MASSACHUSETTS,

Cross-Petitioner,

v.

OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, *et al.*,

Cross-Respondents.

On Writs of Certiorari to the United States Court of Appeals for the First Circuit

---

BRIEF OF THE COUNCIL OF STATE GOVERNMENTS, INTERNATIONAL CITY MANAGEMENT ASSOCIATION, NATIONAL ASSOCIATION OF COUNTIES, NATIONAL CONFERENCE OF STATE LEGISLATURES, U.S. CONFERENCE OF MAYORS, NATIONAL GOVERNORS' ASSOCIATION, AND NATIONAL LEAGUE OF CITIES AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT/CROSS-PETITIONER

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QUESTIONS PRESENTED

1. Whether Congress intended, by enacting the 1976 amendments to the Administrative Procedure Act, to deprive the federal district courts of jurisdiction to review Medicaid disallowance disputes.

2. Whether bifurcation of litigation over Medicaid disallowances is required by the interaction of the Administrative Procedure Act and the Tucker Act.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	1
TABLE OF AUTHORITIES	v
INTEREST OF THE *AMICI CURIAE*	2
STATEMENT OF THE CASE	3
SUMMARY OF ARGUMENT	3
ARGUMENT	5
I. CONGRESS HAS NOT LEGISLATED TO DEPRIVE THE DISTRICT COURTS OF JURISDICTION TO GRANT COMPLETE RELIEF IN MEDICAID DISALLOWANCE CASES, NOR HAS IT MANIFESTED ANY INTENTION TO DO SO	5
A. The Relief Requested In This Case Is Not Barred By The "Money Damages Exception" To The APA	6
1. *The Commonwealth has not requested money damages*	6
2. *Reimbursement does not constitute money damages*	7
3. *The relief requested here is not "money damages" within the meaning of Section 702 of the APA*	9
B. No Adequate Remedy Is Available In The Claims Court	11
C. The Tucker Act Does Not "Impliedly Forbid" The Relief Sought Here	15
D. The Secretary's Interpretation Of The APA Amendments Contradicts The Essential Purpose Of Those Amendments	17

TABLE OF CONTENTS—Continued

	Page
II. THE DISTRICT COURT IS THE APPROPRIATE TRIBUNAL TO REVIEW MEDICAID DISALLOWANCES	18
III. EVEN IF THE DISTRICT COURT LACKS JURISDICTION TO GRANT COMPLETE RELIEF, IT NONETHELESS HAS JURISDICTION OVER THE COMMONWEALTH'S CLAIMS FOR PROSPECTIVE INJUNCTIVE RELIEF	22
CONCLUSION	26

TABLE OF AUTHORITIES

CASES:	Page
Alabama Rural Fire Insurance Co. v. Naylor, 530 F.2d 1221 (5th Cir. 1976)	14
American Science & Engineering, Inc. v. Califano, 571 F.2d 58 (1st Cir. 1978)	14
Amoco Production Co. v. Hodel, 815 F.2d 352 (5th Cir. 1987), *petition for cert. pending*, No. 87-372	24
Beller v. Middendorf, 632 F.2d 788 (9th Cir. 1980), *cert. denied*, 454 U.S. 855 (1981)	23
Burlington School Committee v. Department of Education, 471 U.S. 359 (1985)	8, 9
Califano v. Sanders, 430 U.S. 99 (1977)	17, 25
Cannon v. University of Chicago, 441 U.S. 677 (1979)	17
Carter v. Seamans, 411 F.2d 767 (5th Cir. 1969), *cert. denied*, 397 U.S. 941 (1970)	24
Cook v. Arentzen, 582 F.2d 870 (4th Cir. 1978)	24
County of Alameda v. Weinberger, 520 F.2d 344 (9th Cir. 1975)	16
Delaware Division of Health & Social Services v. Department of Health & Human Services, 665 F. Supp. 1104 (D. Del. 1987)	23
Denton v. Schlesinger, 605 F.2d 484 (9th Cir. 1979)	24
Dermott Special School District v. Gardner, 278 F. Supp. 687 (E.D. Ark. 1968)	10, 11
Duke Power Co. v. Carolina Environmental Study Group, Inc., 438 U.S. 59 (1978)	24
Giordano v. Roudebush, 617 F.2d 511 (8th Cir. 1980)	24
Glidden Co. v. Zdanok, 370 U.S. 530 (1962)	21
Hahn v. United States, 757 F.2d 581 (3d Cir. 1985)	23, 25
Healy v. Sea Gull Specialty Co., 237 U.S. 479 (1915)	6
International Engineering Co. v. Richardson, 512 F.2d 573 (D.C. Cir. 1975), *cert. denied*, 423 U.S. 1048 (1976)	14

TABLE OF AUTHORITIES—Continued

	Page
Keller v. Merit Systems Protection Board, 679 F.2d 220 (11th Cir. 1982)	24
Laguna Hermosa Corp. v. Martin, 643 F.2d 1376 (9th Cir. 1981)	23
Larson v. Domestic & Foreign Commerce Corp., 337 U.S. 682 (1949)	17
Lee County School District v. Gardner, 263 F. Supp. 26 (D.S.C. 1967)	10, 11
Maryland Department of Human Resources v. Department of Health & Human Services, 763 F.2d 1441 (D.C. Cir. 1985)	9, 23
Massachusetts v. Department Grant Appeals Board, 815 F.2d 778 (1st Cir. 1987)	14
Matthews v. United States, 810 F.2d 109 (6th Cir. 1987)	24
Megapulse, Inc. v. Lewis, 672 F.2d 959 (D.C. Cir. 1982)	23
Melvin v. Laird, 365 F. Supp. 511 (E.D.N.Y. 1973)	24, 24-25
Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran, 456 U.S. 353 (1982)	17
Minnesota ex rel. Noot v. Heckler, 718 F.2d 852 (8th Cir. 1983)	23
National Association of Counties v. Baker, No. 87-5287 (D.C. Cir. Mar. 11, 1988)	9
New Mexico v. Regan, 745 F.2d 1318 (10th Cir. 1984), *cert. denied*, 471 U.S. 1065 (1985)	24
North Side Lumber Co. v. Block, 753 F.2d 1482 (9th Cir.), *cert. denied*, 474 U.S. 931 (1985)	15
Portsmouth Redevelopment & Housing Authority v. Pierce, 706 F.2d 471 (4th Cir.), *cert. denied*, 464 U.S. 960 (1983)	24
Quern v. Jordan, 440 U.S. 332 (1979)	7
Ramirez de Arellano v. Weinberger, 745 F.2d 1500 (D.C. Cir. 1984), *vacated*, 471 U.S. 1113 (1985)	15
Rowe v. United States, 633 F.2d 799 (9th Cir. 1980), *cert. denied*, 451 U.S. 970 (1981)	23, 25

TABLE OF AUTHORITIES—Continued

	Page
Sharp v. Weinberger, 798 F.2d 1521 (D.C. Cir. 1986)	15, 18
Shaw v. Gwatney, 795 F.2d 1351 (8th Cir. 1986)	23
Spectrum Leasing Corp. v. United States, 764 F.2d 891 (D.C. Cir. 1985)	15
United States v. Mottaz, 476 U.S. 834 (1986)	6, 7
Warner v. Cox, 487 F.2d 1301 (5th Cir. 1974)	14
Wingate v. Harris, 501 F. Supp. 58 (S.D.N.Y. 1980)	14
CONSTITUTIONAL PROVISIONS:	
U.S. Const. Art. III, § 2	22
U.S. Const. Amend. XI	2
STATUTES:	
Administrative Procedure Act, 5 U.S.C. (& Supp. IV) § 551 *et seq.*:	
5 U.S.C. (Supp. IV) § 702	*passim*
5 U.S.C. § 704	5
Federal Courts Improvement Act of 1982, Pub. L. No. 97-164, 96 Stat. 25:	
28 U.S.C. § 1295	19, 20
Social Security Act, Tit. XIX, 42 U.S.C. (& Supp. III) §§ 1396-1396q	*passim*
42 U.S.C. § 1396a	20
42 U.S.C. § 1396b(d)(1)	8
42 U.S.C. § 1396b(d)(5)	8
42 U.S.C. § 1396d(d)(1)	2
Tucker Act:	
28 U.S.C. § 1491(a)(1)	19
28 U.S.C. § 1491(a)(2)	12
28 U.S.C. § 1498(a)	19
28 U.S.C. § 171(a)	19, 21
CONGRESSIONAL MATERIALS:	
S. Rep. No. 275, 97th Cong., 2d Sess. (1981)	19, 20
S. Rep. No. 996, 94th Cong., 2d Sess. (1976)	10, 16
S. Rep. No. 1066, 92d Cong., 2d Sess. (1972)	12, 13

TABLE OF AUTHORITIES—Continued

	Page
H.R. Rep. No. 1023, 92d Cong., 2d Sess. (1972)	12, 13
H.R. Rep. No. 1656, 94th Cong., 2d Sess. (1976)	10, 15, 16, 17
Administrative Procedure Act Amendments of 1976: Hearings on S. 796, S. 797, S. 798, S. 799, S. 800, S. 1210, S. 1289, S. 2407, S. 2408, S. 2715, S. 2792, C. 3123, S. 3296, and S. 3297 Before the Subcomm. on Administrative Practice and Procedure of the Senate Comm. on the Judiciary, 94th Cong., 2d Sess. (1976)	16, 17
Collateral Relief in the Court of Claims: Hearing on H.R. 12979 and H.R. 12392 Before Subcomm. No. 2 of the House Comm. on the Judiciary, 92d Cong., 2d Sess. (1972)	12, 13
Sovereign Immunity: Hearing on S. 3568 Before the Subcomm. on Administrative Practice and Procedure of the Senate Comm. on the Judiciary, 91st Cong., 2d Sess. (1970)	10, 11, 17, 18
118 Cong. Rec. 15,009 (1972)	12
118 Cong. Rec. 15,010 (1972)	12, 13
121 Cong. Rec. 29,955 (1975)	9, 17

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TABLE OF AUTHORITIES—Continued

The Federalist	Page
No. 45 (J. Madison)	22
No. 46 (J. Madison)	22
No. 78 (A. Hamilton)	22
No. 79 (A. Hamilton)	22
Petrowitz, *Federal Court Reform: The Federal Courts Improvement Act of 1982—And Beyond*, 32 Am. U.L. Rev. 543 (1983)	20
1986 Annual Report of the Director of the Administrative Office of the United States Courts	20

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INTEREST OF THE *AMICI CURIAE*

The *amici curiae* are organizations whose members include state, county, and municipal governments and officials throughout the United States. Thus, *amici* have a compelling interest in legal issues that affect state and local governments.

This case presents an important jurisdictional issue affecting a State's claim to federal reimbursement of Medicaid expenses. Medicaid is a cooperative state and federal program which permits participating States to share with the federal government the costs of providing, among other things, "health or rehabilitative services for mentally retarded individuals." 42 U.S.C. § 1396d(d)(1). Here, the Secretary of Health and Human Services ruled that the Commonwealth of Massachusetts was not entitled to reimbursement for certain services provided to handicapped individuals in intermediate care facilities for the mentally retarded. On appeal, the United States District Court for the District of Massachusetts reversed the Secretary's determination. The First Circuit affirmed on the merits, but reversed the monetary judgment entered by the district court in favor of the Commonwealth. The court of appeals concluded that, although the district court was authorized to grant prospective relief, retroactive reimbursement was a money judgment that could be obtained only from the Claims Court.

The jurisdictional issue in this case is a recurring one concerning the appropriate forum for litigating disputes over the interpretation of cooperative grant programs. Almost invariably, a suit to determine the legitimacy of state expenditures under a federal grant program will have monetary consequences, just as declaratory or injunctive relief against a State, which is not barred by the Eleventh Amendment, may impose severe financial costs. Moreover, because the Claims Court has only limited equitable powers, disputes arising under federal grant programs would, in many instances, entail two

lawsuits rather than one if the district courts lacked the power to grant full relief.

A holding that only the Claims Court can determine the scope of a federal grant program would also have serious practical consequences for state and local governments. The district courts have greater familiarity both with state-federal grant programs and with the particular state plans governing the implementation of the Medicaid statute in their particular regions. The district courts also have more experience deciding complex issues of statutory and regulatory interpretation than the Claims Court, which has a specialized expertise. And, just as the district courts have greater expertise than the Claims Court in these matters, so too do the regional courts of appeals have greater expertise than the Federal Circuit. Finally, substantial burdens would be placed upon state and local governments if they were required to litigate in Washington all appeals over grants-in-aid.

Because of the importance of this jurisdictional question to *amici* and their members, *amici* respectfully submit this brief to assist the Court in its resolution of this case.[1]

STATEMENT

Amici adopt the statement of respondent and cross-petitioner, the Commonwealth of Massachusetts.

SUMMARY OF ARGUMENT

1. This case presents the question whether the district court is deprived of jurisdiction over all Medicaid disallowance cases which may result in the payment of federal funds to a State. Such a result is neither required by the language of the Administrative Procedure Act ("APA") nor supported by the legislative history of that statute.

---

[1] Pursuant to Rule 36 of the Rules of this Court, the parties have consented to the filing of this brief. Their letters of consent have been filed with the Clerk of the Court.

First, the relief that the Commonwealth has requested in this case is not "money damages" within the meaning of the APA. The prayer for relief is prospective; and the only retroactive relief sought is reimbursement, which, as this Court has previously held, does not constitute damages. Second, there is no indication that Congress intended to deprive the district courts of jurisdiction over grant-in-aid litigation when it enacted the 1976 amendments to the APA. The drafters of the amendments used the term "money damages" interchangeably with "contract damages" or "tort damages" and in fact considered grant-in-aid cases to be appropriate for review under the APA.

Moreover, district court review is not precluded by a Tucker Act remedy in the Claims Court. The Claims Court has very limited equitable powers and is unable to offer the prospective injunctive relief required by the Commonwealth in this case. Indeed, the legislative history of both the APA and the Tucker Act shows that Congress never intended that the jurisdiction of the Claims Court should extend to cases like this one. Finally, this Court should not infer that Congress intended to deprive the district courts of jurisdiction over Medicaid disallowances when district court review was available in 1976, at the time the APA amendments were enacted.

2. There are important policy reasons why Medicaid disallowance cases should be decided by the district courts rather than by the Claims Court. The Claims Court has specialized expertise in the areas of government contracts, government employment, and patents. When Congress reorganized the court system to centralize and unify adjudication in these areas, it explicitly disavowed any intent to do so in other areas of substantive law. Grant-in-aid cases are especially appropriate for decision by

regional courts, which are familiar both with the Medicaid statute and with the implementing state plans.

3. Even assuming that the district court lacks jurisdiction to grant relief as to the accrued sums owed to the Commonwealth, the district court nonetheless has jurisdiction to decide the underlying issues of prospective statutory interpretation presented here. The fact that such a decision may form the basis for a subsequent money judgment is not sufficient to deprive the district court of jurisdiction over the prospective claims. It falls to Congress, not this Court, to eliminate whatever inefficiencies of judicial decisionmaking may result from the bifurcation of claims because of the interaction of the APA and the Tucker Act.

ARGUMENT

I. CONGRESS HAS NOT LEGISLATED TO DEPRIVE THE DISTRICT COURTS OF JURISDICTION TO GRANT COMPLETE RELIEF IN MEDICAID DISALLOWANCE CASES, NOR HAS IT MANIFESTED ANY INTENTION TO DO SO.

The Secretary contends that the district court is deprived of jurisdiction in this case by the force of three provisions contained in the 1976 amendments to the APA: (1) the "money damages exception" in Section 702; (2) the proviso in Section 704 that there be "no other adequate remedy in a court"; and (3) the statutory preclusion proviso in Section 702. As we show below, however, the language, legislative history, and underlying purpose of the APA amendments manifest no intent by Congress to divest the district courts of jurisdiction over Medicaid disallowances. Moreover, in the absence of any clear indication of such congressional intent, this Court should not infer that Congress intended to repeal a remedy that was available at the time the APA amendments were enacted.

A. The Relief Requested In This Case Is Not Barred By The "Money Damages Exception" To The APA.

The Secretary's principal argument (Pet. Br. 15-34) against district court jurisdiction in this case rests upon Section 702 of the APA, which provides that "[a]n action in a court of the United States *seeking relief other than money damages*" shall not be dismissed on grounds of sovereign immunity. 5 U.S.C. (Supp. IV) § 702 (emphasis added). The Secretary no longer disputes that the Medicaid statute covered the services the Commonwealth provided to mentally retarded citizens; and he concedes that, if those services are covered, the Medicaid statute mandates reimbursement. (Pet. Br. 17.) However, because the Commonwealth is unwilling to waive recovery of the more than $10 million already improperly withheld by the federal government, the Secretary insists that the district court and the First Circuit had no jurisdiction over this case. (Pet. Br. 15 n.11.)

The Secretary's argument lacks merit for several reasons. First, the Commonwealth did not request the district court to award "money damages." Second, the reimbursement requested by the Commonwealth does not constitute "money damages." Third, there is no evidence that Congress intended, by using the phrase "money damages" in the APA amendments, to oust the district courts of jurisdiction over grant-in-aid litigation.

1. *The Commonwealth has not requested money damages.*

As this Court has recently reaffirmed, in the context of a case where the Government raised the issue of jurisdiction under the Tucker Act, "'[j]urisdiction generally depends upon the case made and relief demanded by the plaintiff.'" *United States v. Mottaz*, 476 U.S. 834, 850 (1986), *quoting Healy v. Sea Gull Specialty Co.*, 237 U.S. 479, 480 (1915) (Holmes, J.). In *Mottaz*, the Indian claimant sought to compel the Government to purchase

from her certain lands that had been transferred previously to the Forest Service. Because the relief sought consisted of payment of the current fair market value of the land, rather than damages equal to compensation for a past taking, this Court held that the case did not fit within the scope of the Tucker Act. 476 U.S. at 838, 850-51.

Under *Mottaz*, analysis of the relief requested in this case must thus begin with the prayer for relief. The Commonwealth asked the district court to:

> 1. Enjoin the Secretary . . . from failing or refusing to reimburse the Commonwealth, or from recovering from the Commonwealth, the federal share of expenditures for medical assistance to eligible residents . . . .
>
> 2. Set aside the Board's Decision . . . .
>
> 3. Grant such declaratory and other relief as the Court deems just.

(Pet. App. 93-94, 98-99.) The Commonwealth's prayer for relief is entirely prospective. Although substantial monetary consequences may flow from a prospective order, that fact does not transform the resulting public expenditures into retroactive damages. *Cf. Quern v. Jordan*, 440 U.S. 332, 337, 347-49 (1979). Moreover, any impact the prospective order will have upon sums past due simply flows from the assumption that the Secretary would reimburse the Commonwealth without the need for a separate suit for collection, once it was determined that the sums had been wrongfully withheld. (See Cross-Pet. 11.) In short, the prayer for relief here does not request "money damages."

2. *Reimbursement does not constitute money damages.*

The superficial similarity between the relief requested here and retroactive damages is simply an accidental by-product of the statutory framework governing the

Medicaid program. Medicaid funds are provided to a State in advance, based on a quarterly estimate of expenditures to be made by the State. 42 U.S.C. § 1396b (d)(1). Subsequently, based on retroactive audits, the Secretary may determine, as he did in this case, that certain state expenditures were not reimbursable under Medicaid and should have been disallowed. 42 U.S.C. § 1396b(d)(5). Before judicial review is available concerning the merits of the Secretary's interpretation of the Medicaid statute, the amounts disallowed are recouped from the federal contributions for succeeding years, although the State is still required to provide all necessary services during those subsequent years.[2] Thus, the Medicaid "account" between a state and the federal government is periodically adjusted on a retroactive basis. Where, as here, there is a dispute regarding the scope of the statute, the federal government is invested with a self-help remedy—recoupment from subsequent federal grants despite the pendency of litigation. Under the statutory scheme, therefore, the State is invariably in the position of seeking to recoup the disallowed funds from the federal government, rather than vice versa.

If, in fact, a decision could be obtained from the administrative and judicial process at the moment of disallowance, prospective injunctive relief would be adequate to prevent the Secretary's wrongful withholding of accrued sums. Thus, as this Court held in *Burlington School Committee v. Department of Education*, 471 U.S. 359, 370-71 (1985), reimbursement in this type of case simply does not constitute "damages." Because the statute contemplates a *post hoc* determination of financial responsibility, reimbursement merely requires the government "to belatedly pay expenses that it should have paid all along." *Id.*

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[2] The State may elect to retain the funds pending a final determination by the Departmental Grant Appeals Board, but must then pay interest on the sums retained if the disallowance is upheld. 42 U.S.C. § 1396b(d)(5).

Based on similar considerations, the District of Columbia Circuit has held that, where a state or local government sues to obtain funds to which it is entitled under a statute, instead of money in compensation for losses suffered from the withholding of those funds, the relief sought is not barred by Section 702 of the APA, even though the court's order may ultimately require payment of money by the federal government. *National Association of Counties v. Baker*, No. 87-5287, slip op. 5-7 (D.C. Cir. Mar. 11, 1988); *Maryland Department of Human Resources v. Department of Health & Human Services*, 763 F.2d 1441, 1446-48 (D.C. Cir. 1985). Thus, the court of appeals has found that neither the reimbursement of Medicaid disallowances nor the disbursement of funds sequestered pursuant to the Gramm-Rudman Act constitutes "money damages" within the meaning of the APA. *Id.*

As in *Burlington School Committee*, *National Association of Counties*, and *Maryland Department of Human Resources*, the reimbursement sought here does not constitute "money damages."

3. *The relief requested here is not "money damages" within the meaning of Section 702 of the APA.*

The legislative history of the APA provides no direct evidence as to the meaning of the phrase "money damages." The precise question before this Court was never raised during the hearings on the 1976 amendments to the APA, when the "money damages exception" was added to the statute. It is clear, however, from the legislative history that the witnesses, drafters, and legislators involved in the 1976 amendments primarily associated the term "money damages" with the traditional notion of damages in contract and tort. For example, when Senator Bumpers introduced the bill, he stated that "[d]amages *in tort or contract* may be available because of statutes waiving the defense, but damages are sometimes not an adequate remedy." 121 Cong. Rec. 29,955 (1975)

(remarks of Sen. Bumpers) (emphasis added). See also *Sovereign Immunity: Hearing on S. 3568 Before the Subcomm. on Administrative Practice and Procedure of the Senate Comm. on the Judiciary*, 91st Cong., 2d Sess. (1970) ("1970 Hearing") at 18 ("Congress has made great strides in establishing—through the Tucker Act and the Federal Tort Claims Act—systems of federal monetary liability for contract and tort") (statement of Roger C. Cramton).

The only evidence to suggest that Congress ever considered the impact of the APA amendments upon the reviewability of grants-in-aid is indirect. As the Secretary has noted (Pet. Br. 32-34), both the House and Senate Reports on the 1976 amendments refer to "administration of Federal grant-in-aid programs" as one area in which the government had been raising the sovereign immunity defense, thus alerting the Committee to the importance of ameliorating the effect of this doctrine. H.R. Rep. No. 1656, 94th Cong., 2d Sess. 9 (1976), *reprinted in* 1976 U.S. Code Cong. & Admin. News 6121, 6129; S. Rep. No. 996, 94th Cong., 2d Sess. 8 (1976). At a minimum, one may thus conclude that Professor Cramton, who raised this issue during the 1970 hearing (see 1970 Hearing at 121), and the Committee which gave heed to his advice and included this reference in the official report, believed that sovereign immunity was not an appropriate defense in litigation over grants-in-aid.

Moreover, contrary to the Secretary's reading (Pet. Br. 34), the cases that gave rise to Professor Cramton's concern were cases in which plaintiffs had sought money from the federal government. In *Lee County School District v. Gardner*, 263 F. Supp. 26, 28-30 (D.S.C. 1967), the plaintiff sued to enjoin deferral of payment of federal funds to which the school district was entitled; and in *Dermott Special School District v. Gardner*, 278 F. Supp. 687, 690-92 (E.D. Ark. 1968), the "deferral" amounted

to a withholding of some $80,000 in federal financial assistance.[3] The federal government raised a sovereign immunity defense in both cases. The defense was rejected by both courts, on the ground that the plaintiffs had not sought a positive order directing the payment of funds, but had merely requested that "the defendants be ordered to cease an allegedly unlawful interference with the flow of funds to which the plaintiffs are already otherwise legally entitled." *Lee County*, 263 F. Supp. at 30; *Dermott*, 278 F. Supp. at 691.[4] The relief requested in those cases is remarkably similar to that sought here. (See Pet. App. 93-94, 98-99.)

In sum, there is substantial, if somewhat indirect, evidence that Congress intended district court review to be available in cases involving grant-in-aid programs like that at issue here; and there is no evidence to suggest that Congress intended to deprive the district courts of the authority to grant complete relief in grant-in-aid cases when it enacted the 1976 amendments.

B. No Adequate Remedy Is Available In The Claims Court.

The Secretary also argues that district court review was foreclosed in this case because the Commonwealth has an adequate remedy in the Claims Court. (Pet. Br.

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[3] Federal financial assistance had already been approved in each case and was withheld when the districts failed to comply with subsequently promulgated guidelines.

[4] These cases reflect the tortuous reasoning required prior to the enactment of the 1976 amendments, when it was unclear whether affirmative relief was available against the government. Professor Cramton clearly thought that the necessity for such formulations merely wasted judicial resources before reaching the merits of the case. See 1970 Hearing at 48-50, 98-109.

34-35, 43-44.) However, the Commonwealth seeks injunctive and declaratory relief concerning the Secretary's interpretation and application of the Medicaid statute in the future. (Pet. App. 93-94, 98-99.) This relief, as the Secretary ultimately concedes (Pet. Br. 45), is clearly not available from the Claims Court. Nonetheless, the Secretary suggests that the Claims Court's power to remand the case to the agency will allow the Commonwealth to obtain adequate relief. (Pet. Br. 44.) As the legislative history of the 1972 amendments to the Tucker Act makes clear, however, the Claims Court's limited equitable powers are wholly inadequate to the remedy sought and required by the Commonwealth here.

The Tucker Act was amended in 1972 to grant certain specific and very limited equitable powers to the Court of Claims, specifically, the right to reinstate wrongfully discharged government employees, to place civil and military employees in appropriate duty or retirement status, to correct records, and "to remand appropriate matters to any administrative or executive body or official with such direction as it may deem proper and just." 28 U.S.C. § 1491(a)(2).[5] It is clear from the legislative history that the Claims Court's power to remand cases to the agency is limited to government contract cases in which the record is inadequate for review. See H.R. Rep. No. 1023, 92d Cong., 2d Sess. 4 (1972); S. Rep. No. 1066, 92d Cong., 2d Sess. (1972), *reprinted in* 1972 U.S. Code Cong. & Admin. News 3118-19; 118 Cong. Rec. 15,010 (1972). This limited power of remand is obviously not an adequate remedy in this case.

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[5] See H.R. Rep. No. 1023, 92d Cong., 2d Sess. 1-7 (1972); S. Rep. No. 1066, 92d Cong., 2d Sess. (1972), *reprinted in* 1972 U.S. Code Cong. & Admin. News 3116-3121; 118 Cong. Rec. 15,009-10 (1972); *Collateral Relief in the Court of Claims: Hearing on H.R. 12979 and H.R. 12392 Before Subcomm. No. 2 of the House Comm. on the Judiciary*, 92d Cong., 2d Sess. (1972) ("1972 Hearing").

Indeed, Congress rejected an earlier version of the 1972 amendments to the Tucker Act because it would have empowered the Court of Claims to "issue such orders and grant such relief as the district courts may issue and grant in civil cases against the United States" (see 1972 Hearing at 2), and therefore could potentially have been interpreted as equating the powers of the Court of Claims with those of the district court. *Id.* at 115-28 (statement of Deputy Assistant Attorney General Jaffe; letter of Deputy Attorney General Kleindienst). The Justice Department objected that this language would create uncertainty about whether the Court of Claims had jurisdiction over a wide range of governmental activities, and would therefore engender additional collateral litigation. See 1972 Hearing at 126-28. In response to this objection, an alternative version was proposed and accepted, to make clear that the amendment did not alter the jurisdiction of the Court of Claims. See H.R. Rep. No. 1023, *supra*, at 2.

In addition, the legislative history of the 1972 amendments is replete with explicit assurances that the amendments were not intended to expand the jurisdiction of the Court of Claims beyond its traditional subjects—government contracts and government disputes with its civilian and military employees. See H.R. Rep. No. 1023, *supra*, at 3 ("the amended bill does not extend the classes of cases over which the Court of Claims has jurisdiction, and it is not intended to confer jurisdiction over any type of case not now included within its jurisdiction"); S. Rep. No. 1066, *supra*, *reprinted in* U.S. Code Cong. & Admin. News 3117; 118 Cong. Rec. 15,010 (1972); 1972 Hearing at 16-17 (statement of Judge Cowen); *id.* at 61 (statement of Thomas H. King). It is therefore not surprising that all of the cases cited by the Secretary to support the proposition that adequate relief may be granted by the Claims Court (Pet. Br. 43 n.38) fall within that court's traditional exclusive jurisdiction over contracts

between the government and private parties. *See American Science & Engineering, Inc. v. Califano*, 571 F.2d 58 (1st Cir. 1978); *Alabama Rural Fire Insurance Co. v. Naylor*, 530 F.2d 1221 (5th Cir. 1976); *International Engineering Co. v. Richardson*, 512 F.2d 573 (D.C. Cir. 1975), *cert. denied*, 423 U.S. 1048 (1976); *Warner v. Cox*, 487 F.2d 1301 (5th Cir. 1974). None of these cases involved a dispute between a State and the federal government under a statutory grant-in-aid program.[6]

In sum, the legislative history of the Tucker Act makes clear that the equitable powers of the Claims Court are totally inadequate to provide the relief that the Commonwealth has sought and requires in this case. That legislative history also shows that Congress never anticipated that the Claims Court would be permitted to expand its subject matter jurisdiction beyond the traditional subjects of its jurisdiction, and, in fact, that Congress clearly meant to foreclose that expansion.

In the final analysis, the Secretary would apparently require the Commonwealth to obtain relief from the

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[6] The only cases in which district court review of a grant-in-aid program has been found precluded by the exclusive jurisdiction of the Claims Court have involved unusual circumstances where the court's decision would have no prospective effect at all. For example, *Massachusetts v. Department Grant Appeals Board*, 815 F.2d 778 (1st Cir. 1987), concerned reimbursement for the expense of providing abortions under Medicaid during the pendency of a challenge to the Hyde Amendment: The Commonwealth provided the abortions pursuant to court order during that interim period, but would not do so if the legal challenge failed. Similarly, *Wingate v. Harris*, 501 F. Supp. 58 (S.D.N.Y. 1980), involved reimbursements to nursing homes which had since been decertified. Both of these cases involved expenditures that were discontinued and would not be resumed; therefore the courts' decisions could not have had any prospective effect. Even assuming that those cases were correctly decided, they are very different from the case at hand, where the Commonwealth continues to provide the medical services disallowed by the Secretary.

Claims Court in this or similar cases by means of repeated suits for damages. (Pet. Br. 45 n.41.) Quite obviously, this procedure does not provide an adequate remedy for a State, which requires the certainty available from injunctive and declaratory relief in order to plan and budget expenditures for the future. Repeated lawsuits would also result in a clear waste of public resources, on the part of both litigants and the judiciary. In short, if the district court does not have jurisdiction to grant relief in this case, an adequate remedy is simply not available to the Commonwealth.

C. The Tucker Act Does Not "Impliedly Forbid" The Relief Sought Here.

Finally, the Secretary argues that the district court does not have jurisdiction here because the Tucker Act impliedly forbids the relief sought. (Pet. Br. 44-46.) Again, the cases which the Secretary cites in support of this proposition all involve the Claims Court's well-established exclusive jurisdiction over government contracts and employment. *See Sharp v. Weinberger*, 798 F.2d 1521 (D.C. Cir. 1986); *Spectrum Leasing Corp. v. United States*, 764 F.2d 891 (D.C. Cir. 1985); *North Side Lumber Co. v. Block*, 753 F.2d 1482 (9th Cir.), *cert. denied*, 474 U.S. 931 (1985).[7]

By contrast, the legislative history of the statutory preclusion proviso of Section 702 of the APA demonstrates that Congress did not intend to preclude the relief sought by the Commonwealth in this case. The drafters of the proviso had very specific prohibitions in mind, such as provisions prohibiting injunctive and declaratory relief against the collection of federal taxes. See H.R. Rep. No. 1656, *supra*, at 13, *reprinted in* 1976 U.S. Code

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[7] The Secretary also cites the dissent in *Ramirez de Arellano v. Weinberger*, 745 F.2d 1500 (D.C. Cir. 1984), *vacated*, 471 U.S. 1113 (1985). A quite different question was presented there: whether the Tucker Act prohibits specific relief for a taking. 745 F.2d at 1550-56.

Cong. & Admin. News 6133; S. Rep. No. 996, *supra*, at 11; *Administrative Procedure Act Amendments of 1976: Hearings on S. 796, S. 797, S. 798, S. 799, S. 800, S. 1210, S. 1289, S. 2407, S. 2408, S. 2715, S. 2792, C. 3123, S. 3296 and S. 3297 Before the Subcomm. on Administrative Practice and Procedure of the Senate Comm. on the Judiciary*, 94th Cong., 2d Sess. (1976) ("1976 Hearings") at 86 (statement of Francis M. Gregory, Jr.). Moreover, when the drafters considered the preclusive effect of the Tucker Act, they were explicitly concerned that the APA not be interpreted to take away the exclusive jurisdiction of the Court of Claims over government contracts or to grant authority to order the specific performance of government contracts. See H.R. Rep. No. 1656, *supra*, at 12-13, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6133.[8] None of these concerns is implicated by the case at hand.

The framers of the statutory preclusion proviso repeatedly emphasized that its purpose was not to withdraw any specific relief that was available, but only to make clear that the APA amendments did not confer new authority where Congress had specified that only certain remedies were available. H.R. Rep. No. 1656, *supra*, at 13, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6133; S. Rep. No. 996, *supra*, at 11-12. In 1976, when the APA amendments were enacted, review of Medicaid disallowances was available in the district courts. *See County of Alameda v. Weinberger*, 520 F.2d 344 (9th Cir. 1975). To imply that the 1976 amendments divested the district courts of this jurisdiction would thus directly

[8] In general, the prohibitions encompassed by the statutory preclusion proviso were prohibitions against types of relief that were not available from the government at all. Here, by contrast, the Secretary does not argue that the Commonwealth is seeking a type of relief that was not previously available. He argues only that the Commonwealth should be required to seek that relief in a different forum.

contradict these congressional assurances, as well as settled principles of statutory construction. *See Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 381-82 (1982). *See also Cannon v. University of Chicago*, 441 U.S. 677, 696-99 (1979). In light of Congress' presumed familiarity with a remedy that was already recognized, this Court should not conclude that Congress intended to repeal that remedy, in the absence of a clearly expressed congressional intent to do so.

D. The Secretary's Interpretation Of The APA Amendments Contradicts The Essential Purpose Of Those Amendments.

The Secretary's interpretation of the APA amendments to foreclose review here is not only contradicted by the language and legislative history of the statute, but is contrary to the most central purpose those amendments. As this Court stated in *Califano v. Sanders*, 430 U.S. 99, 104 (1977), "the [APA] statute undoubtedly evinces Congress' intention and understanding that judicial review should be widely available to challenge the actions of federal administrative officials."

The central concern of the drafters of the 1976 APA amendments was to make clear that affirmative relief was available against the government, even where judicial review had not been provided by statute. See, *e.g.*, 121 Cong. Rec. 29,955-56 (1975) (remarks of Sen. Bumpers); H.R. Rep. No. 1656, *supra*, at 4-5, *reprinted in* 1976 U.S. Code Cong. & Admin. News 6124-25; 1976 Hearings at 230-31 (statement of Richard K. Berg). In particular, Congress recognized that it was necessary to dispel confusion arising out of certain statements in *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 691 n.11 (1949), to the effect that sovereign immunity was waived only where relief could be had by ordering the cessation of conduct by the government, and not where affirmative action was required. See 1970 Hearing at 98-109. The bill's proponents thus intended to make clear that affirmative relief was available. An explicit goal

was to prevent attorneys for the federal government from repeatedly raising arguments based on sovereign immunity and setting jurisdictional traps for plaintiffs, instead of concentrating their efforts, and those of the judiciary, on the merits of the case. See, *e.g.*, Cramton, *Nonstatutory Review of Federal Administrative Action: The Need for Statutory Reform of Sovereign Immunity, Subject Matter Jurisdiction, and Parties Defendant*, 68 Mich. L. Rev. 389, 420-23 (1970); 1970 Hearing at 48-50.[9] To prevent this waste of resources, the amendment was to sound a loud and certain trumpet that the government did indeed mean to open itself generally to suits for specific relief arising out of actions by administrative agencies.

In this case, the Commonwealth contests an administrative agency's interpretation of a statute that governs the future relationship between the Commonwealth and the federal government, and the Commonwealth seeks affirmative injunctive relief. In light of all the indications that Congress intended the APA amendments to open the district courts to similar suits, and not to take away any remedy then available, there is no basis for this Court to conclude that the 1976 amendments were intended to divest the district courts of jurisdiction in cases such as this.

II. THE DISTRICT COURT IS THE APPROPRIATE TRIBUNAL TO REVIEW MEDICAID DISALLOWANCES.

The Secretary also argues that a variety of public policy reasons—centralization, uniformity, and efficiency—require that Medicaid disallowance cases be heard

[9] As Justice (then Judge) Scalia observed in *Sharp v. Weinberger*, 798 F.2d 1521, 1522 (D.C. Cir. 1986): "If there is a less profitable expenditure of the time and resources of federal courts and federal litigants than resolving a threshold issue of which particular federal court should have jurisdiction, it does not come readily to mind." Such a waste is particularly obvious in this case because the Secretary did not raise the jurisdictional issue until he had litigated the merits and lost.

in the Claims Court. (Pet. Br. 38-43.) The Secretary's arguments simply obfuscate the vital public policies which are at stake here.

It is true that Congress intended to centralize the decision of certain types of cases when it enacted the Federal Courts Improvement Act ("FCIA").[10] In particular, the legislative history of the FCIA manifests a concern with non-uniformity of decisions and forum-shopping in the highly complex and technical area of patents, which Congress saw as resting upon fact questions in need of special expertise and uniformity of decision. See S. Rep. No. 275, 97th Cong., 2d Sess. 5-7, 39 (1981), *reprinted in* 1982 U.S. Code Cong. & Admin. News 15-17, 48. The legislative history shows an equally strong opposition, however, to centralization and specialization of judicial decisionmaking beyond the limited areas within the traditional jurisdiction of the Court of Claims and the Court of Patent Appeals.[11] Although there had been extensive lobbying efforts to establish a number of specialized courts, as well as a national court of appeals, Congress rejected those efforts and strongly reaffirmed its general commitment to the regional court system. See S. Rep. No. 275, *supra*, at 4, 39-40, *reprinted in* 1982 U.S.

[10] Among other things, the FCIA combined the trial level jurisdictions of the former Court of Claims and the Court of Patent Appeals in the new Claims Court, and centralized all appeals from such cases in the new Court of Appeals for the Federal Circuit. See 28 U.S.C. §§ 1295, 1491(a)(1), 1498(a). The new Claims Court is an Article I court. 28 U.S.C. § 171(a).

[11] In fact, the proponents of the 1976 APA amendments also expressed concern with overcentralization of adjudication. See Byse, *Proposed Reforms in Federal "Nonstatutory" Judicial Review: Sovereign Immunity, Indispensable Parties, Mandamus*, 75 Harv. L. Rev. 1479, 1494-96 (1962). Professor Byse pointed out that nonstatutory review actions often involve questions of local significance with which local judges are familiar, and that centralization of adjudication in Washington imposes severe burdens and expense upon litigants.

Code Cong. & Admin. News 14, 48-49; see also Petrowitz, *Federal Court Reform: The Federal Courts Improvement Act of 1982—And Beyond*, 32 Am. U.L. Rev. 543, 544-50 (1983). Moreover, the legislative history clearly shows that the FCIA was not intended to expand the subject matter jurisdiction of the former Court of Claims. S. Rep. No. 275, *supra*, at 4, *reprinted in* 1982 U.S. Code Cong. & Admin. News 14.

In light of these strong statements, the Secretary's argument that decision of Medicaid disallowance cases by the district courts somehow contravenes public policy is unconvincing. Cases concerning Medicaid disallowances are particularly appropriate for decision by the regional courts. The statute itself is based on a concept of regionalism, as the Medicaid program is structured around a variety of state plans. 42 U.S.C. § 1396a. The district courts are familiar not only with the Medicaid statute, but also with the intricacies of the particular state plans in their respective States. The expertise of the Claims Court, on the other hand, lies in the areas of government contracts, government employment, patents, and certain tax matters. See, *e.g.*, 1986 Annual Report of the Director of the Administrative Office of the United States Courts 335.[12] The same distinction exists between the regional courts of appeals and the Federal Circuit.

The policy arguments raised by the Secretary concerning bifurcation, or "claim splitting," are similarly inapposite. (Pet. Br. 39-42.) Even if this case were submitted initially to the Claims Court, bifurcation would result because the Claims Court could not give complete relief. Indeed, that scenario would turn the usual order on its head because the State would be required first to

[12] In the court year ended September 30, 1986, for example, the Claims Court disposed of 669 complaints, of which 248 involved government contracts, 165 involved government employment, and 139 involved tax matters. 1986 Annual Report of the Director of the Administrative Office of the United States Courts 335.

seek a judgment for damages before seeking the more comprehensive equitable relief available from the district court. This procedure would also have the untoward result that the collateral estoppel effect of a judgment would run from an Article I court to an Article III court. See 28 U.S.C. § 171(a). On the other hand, if the litigation begins in the district court, the Secretary has it within his own power to avoid a second suit. If the Secretary's interpretation of the statute is approved by the district court, that will end the litigation; if the Secretary loses, he could simply calculate the amounts past due and pay them over to the State.

Finally, the Secretary's arguments in this case threaten to expand the jurisdiction of the Claims Court far beyond its traditional boundaries. Historically, the Claims Court was created as a tribunal to relieve Congress of the pressure caused by numerous private bills. *Glidden Co. v. Zdanok*, 370 U.S. 530, 552-53 (1962); see also P. Bator, P. Mishkin, D. Shapiro, and H. Wechsler, *Hart & Wechsler's The Federal Courts and the Federal System* 1326-30 (2d ed. 1973). Although its jurisdiction has been expanded at various times, the Claims Court is still essentially a tribunal for claims against the federal government by private individuals who have contracted with it, have been employed by it, or have been required to turn over their property to it. For reasons having to do with reluctance to tell the sovereign what to do, its remedies have largely been limited to money. This case, however, concerns the relationship between two sovereigns—a State and the federal government—and the Secretary's arguments may be extended to cover disputes arising out of any grant-in-aid program where there is no statutory provision for review.[13]

[13] As other *amici* point out, the federal government has already raised this jurisdictional issue in the context of other statutes and in cases in which the government has been named as a third-party defendant by a State, which has itself been sued by ultimate

The sovereignty of the States was so important to the Framers of the Constitution that cases in which a State is a party may be brought as a matter of original jurisdiction in this Court. U.S. Const. Art. III, § 2. Given the importance that the Framers placed both upon state sovereignty and upon an independent judiciary, the notion that a State could be required to sue the federal government in an Article I tribunal clearly would have astonished the founders. See, *e.g.*, *The Federalist* Nos. 45-46 (J. Madison) and Nos. 78-79 (A. Hamilton). Should the Secretary's argument prevail, a State would presumably be required to decide between bringing suit in the Claims Court or in this Court.

The absurd results which necessarily flow from the Secretary's position cannot have been envisaged by Congress either in drafting the APA amendments or in outlining and expanding the jurisdiction of the Claims Court. This Court should reject the Secretary's interpretation and affirm Congress' intent to open the district courts to challenges to actions by administrative agencies, holding that the district court has jurisdiction over this case and the authority to order complete relief.

III. EVEN IF THE DISTRICT COURT LACKS JURISDICTION TO GRANT COMPLETE RELIEF, IT NONETHELESS HAS JURISDICTION OVER THE COMMONWEALTH'S CLAIMS FOR PROSPECTIVE INJUNCTIVE RELIEF.

Unlike the Court of Appeals, we believe that the district court has jurisdiction to grant complete relief in this case. However, even assuming, for the sake of argument, that the district court lacks authority to order the payment of the accrued sums due to the Commonwealth, the district court nonetheless has jurisdiction over the claims for prospective injunctive relief.

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beneficiaries of a grant-in-aid program; this practice results in the pendency of two separate lawsuits over the same issues. See Brief of Victoria Grimesy, *et al.*, as *amici curiae* in support of the Commonwealth of Massachusetts.

The authority for this proposition is overwhelming. Every federal court to confront this jurisdictional question in the context of a case involving a Medicaid disallowance with any prospective effect has concluded either that the entire case should be decided by the district court or that the district court should decide the nonmonetary claims and transfer to the Claims Court the claim for past sums disallowed. *Maryland Department of Human Resources v. Department of Health & Human Services*, 763 F.2d 1441, 1446-48 (D.C. Cir. 1985) (district court jurisdiction over entire claim); *Minnesota ex rel. Noot v. Heckler*, 718 F.2d 852, 859-60 (8th Cir. 1983) (district court jurisdiction over prospective nonmonetary claims and Claims Court jurisdiction over retroactive monetary claims); *Delaware Division of Health & Social Services v. Department of Health & Human Services*, 665 F. Supp. 1104, 1117 (D. Del. 1987) (district court jurisdiction over entire claim).[14]

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[14] In addition, there is significant precedent in a variety of other contexts to the effect that the district court does not lose jurisdiction over a claim for nonmonetary relief simply because it may form the basis for a subsequent monetary judgment. *Shaw v. Gwatney*, 795 F.2d 1351, 1356 (8th Cir. 1986) (suit for reinstatement and back pay by National Guard officer); *Hahn v. United States*, 757 F.2d 581, 589 (3d Cir. 1985) (suit by participants in national health service scholarship program seeking declaratory, injunctive, and monetary relief from denial of constructive-service credit); *Megapulse, Inc. v. Lewis*, 672 F.2d 959, 971 (D.C. Cir. 1982) (suit by government contractor to enjoin alleged violation of Trade Secrets Act); *Laguna Hermosa Corp. v. Martin*, 643 F.2d 1376, 1379 (9th Cir. 1981) (suit to extend concession agreement); *Rowe v. United States*, 633 F.2d 799, 802 (9th Cir. 1980), *cert. denied*, 451 U.S. 970 (1981) (suit by bidders for oil and gas leases); *Beller v. Middendorf*, 632 F.2d 788, 797-800 (9th Cir. 1980) (Kennedy, J.), *cert. denied*, 454 U.S. 855 (1981) (suit to challenge discharge from Navy of those who engage in homosexual activity);

None of the contrary authority cited by the Secretary involves an ongoing state-federal relationship under a grant-in-aid program, and most of the cases cited involve questions within the Claims Court's traditional jurisdiction over government contracts and employees. *See Portsmouth Redevelopment & Housing Authority v. Pierce*, 706 F.2d 471 (4th Cir.), *cert. denied*, 464 U.S. 960 (1983) (government contract); *Matthews v. United States*, 810 F.2d 109 (6th Cir. 1987) (discharge of air traffic controllers); *Keller v. Merit Systems Protection Board*, 679 F.2d 220 (11th Cir. 1982) (civil service discharge); *Denton v. Schlesinger*, 605 F.2d 484 (9th Cir. 1979) (military discharges); *Cook v. Arentzen*, 582 F.2d 870 (4th Cir. 1978) (military discharge); *Carter v. Seamans*, 411 F.2d 767 (5th Cir. 1969), *cert. denied*, 397 U.S. 941 (1970) (military discharge).[15] In all of these cases, unlike the case at bar, the Claims Court was able to afford an adequate remedy to the plaintiffs.

Although there is some difference of opinion among the circuits on this question, the reasoning of those cases finding that the district court retains jurisdiction over the nonmonetary and prospective claims is persuasive. In *Melvin v. Laird*, for example, Judge Weinstein convincingly demonstrated that the expansion of the powers

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Giordano v. Roudebush, 617 F.2d 511, 514 (8th Cir. 1980) (suit for reinstatement and back pay by physician at veterans' hospital); *Melvin v. Laird*, 365 F. Supp. 511, 516-20 (E.D.N.Y. 1973) (Weinstein, J.) (suit by former army officer seeking declaratory and injunctive relief for alleged deprivation of constitutional rights in court martial). *See also Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 71 n.15 (1978).

[15] Two cases cited by the Secretary involve mineral royalty payments, which, we submit, are more similar to a government contract relationship than to a grant-in-aid relationship. *Amoco Production Co. v. Hodel*, 815 F.2d 352 (5th Cir. 1987), *petition for cert. pending*, No. 87-372; *New Mexico v. Regan*, 745 F.2d 1318 (10th Cir. 1984), *cert. denied*, 471 U.S. 1065 (1985).

of the Court of Claims was not intended to oust the district courts of jurisdiction over claims for equitable relief. *See* 365 F. Supp. at 516-20. It would be particularly surprising to infer such an ouster, without any clear expression of congressional intent, when the result would be to oust an Article III court of jurisdiction and force plaintiffs—particularly sovereign States—to bring suit in the Claims Court, an Article I tribunal. *See Hahn v. United States*, 757 F.2d at 590. Finally, a holding that the district court has no jurisdiction over agency review whenever it is coupled with a claim for monetary relief would contradict this Court's statement in *Califano v. Sanders*, 430 U.S. 99 (1977), to the effect that Congress intended judicial review of agency actions to be widely available. *See Rowe v. United States*, 633 F.2d at 802.

Even though bifurcation of claims may be somewhat inconvenient and inefficient, the case law noted above shows that such bifurcation is not unusual. If this Court holds that the APA precludes the district court from granting complete relief, the resulting bifurcation would simply reflect the interaction of the APA and the Tucker Act, and is a matter for legislative, rather than judicial, concern. For these reasons, this Court should hold that the district court had jurisdiction to review this case.

CONCLUSION

The judgment of the court of appeals should be affirmed in part and reversed in part, and the decision of the district court should be affirmed. In the alternative, this Court should affirm the judgment of the court of appeals.

Respectfully submitted,

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